

# Compliance and Enforcement Update 2018

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# Outline

- Compliance and Enforcement Program Update
- Compliance/Enforcement Data
- New Enforcement Policy
- Supplemental Environmental Projects (SEPs) and New SEP Policy
- 2018-19 FY Priorities
- Questions

# Compliance and Enforcement Program

- FY2017-18 Workplan
- Fourth Iteration of C/E Workplan
- 142 Staff; 56.7 PY
- Fourth Kickoff Meeting July

# C/E Program FY2017-18 Priorities

- Compliance Assistance/Outreach
- Comprehensively Track Complaints
- Utilize Compressed ACLs in Multiple Programs

# Compliance Assistance / Outreach

- Regular Stakeholder Meetings (ILRP)
- County Environmental Crimes Task Force Meetings
- C/E Staff Presentation CWEA Workshop (January 2018)

# Complaints

- Revised CalEPA Complaint Database (March 2016)
- Regional Board consolidated tracking complaints December 2016
- 36% increase in tracked complaints in one year
- 87% of all complaints addressed/closed

# Compressed ACLs

- One Compressed this FY (ILRP)
- Staff presentation at Statewide Enforcement Roundtable (October 2017)

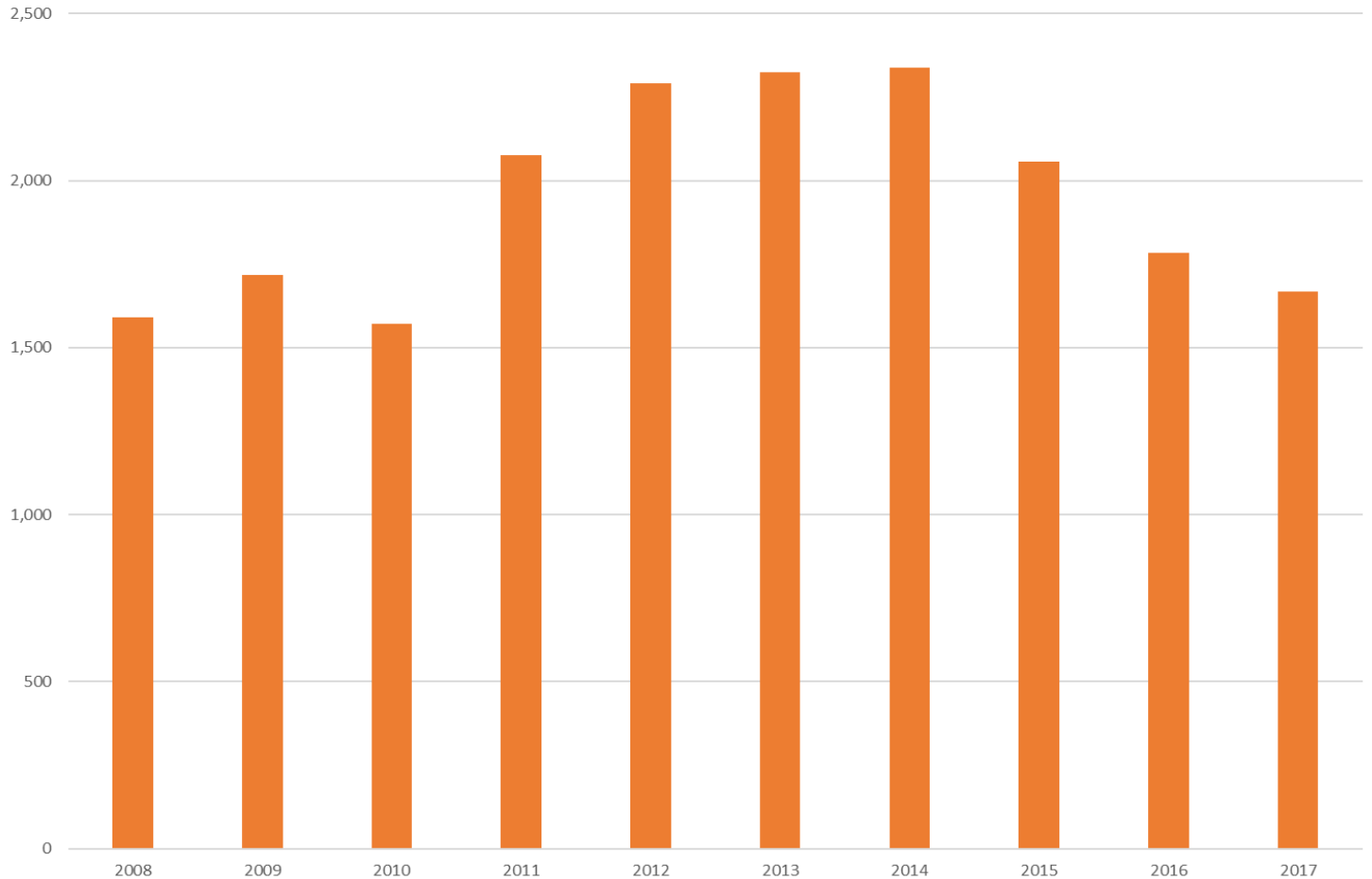


# Compliance and Enforcement Data

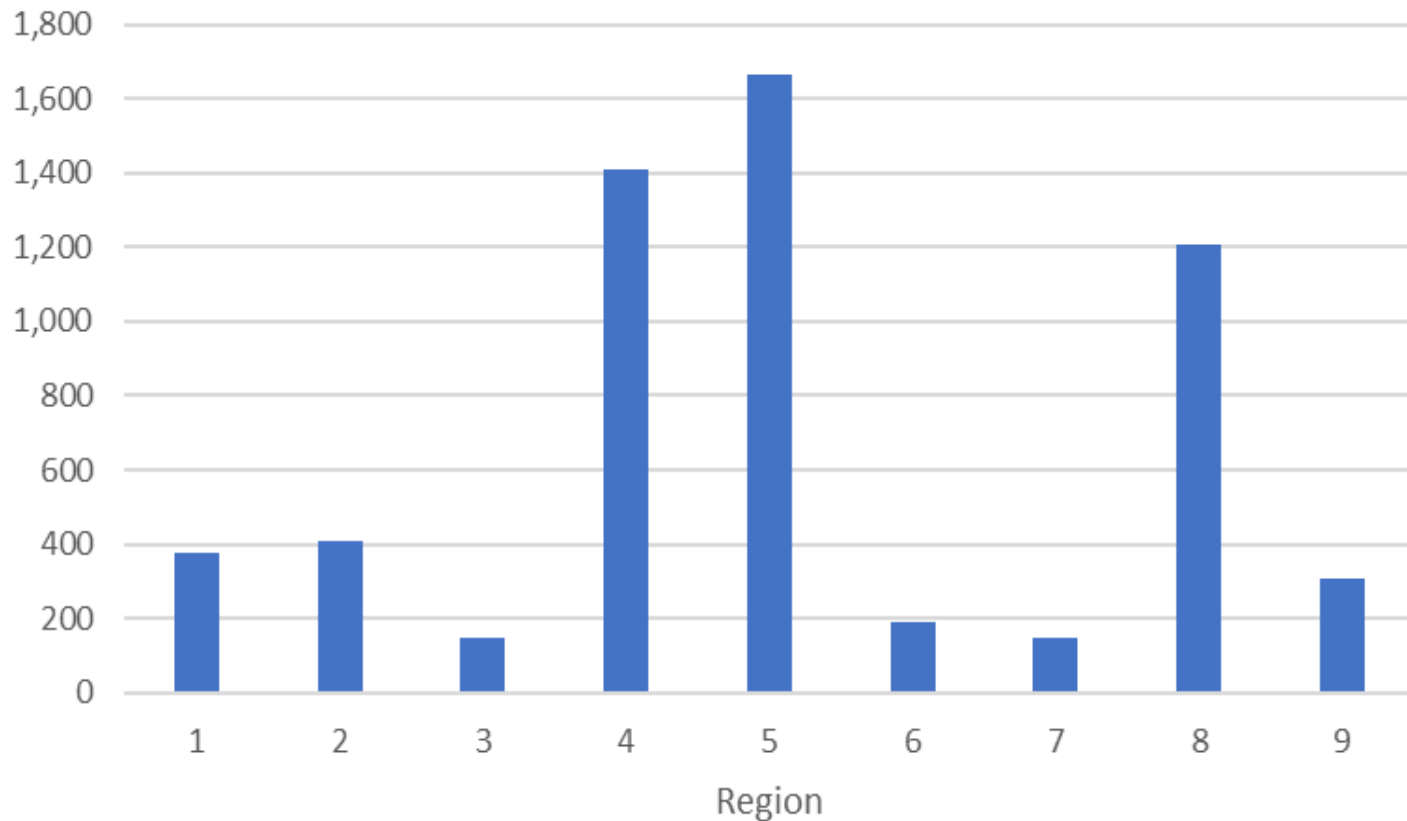
- Inspections
- Violations
- Enforcement Actions



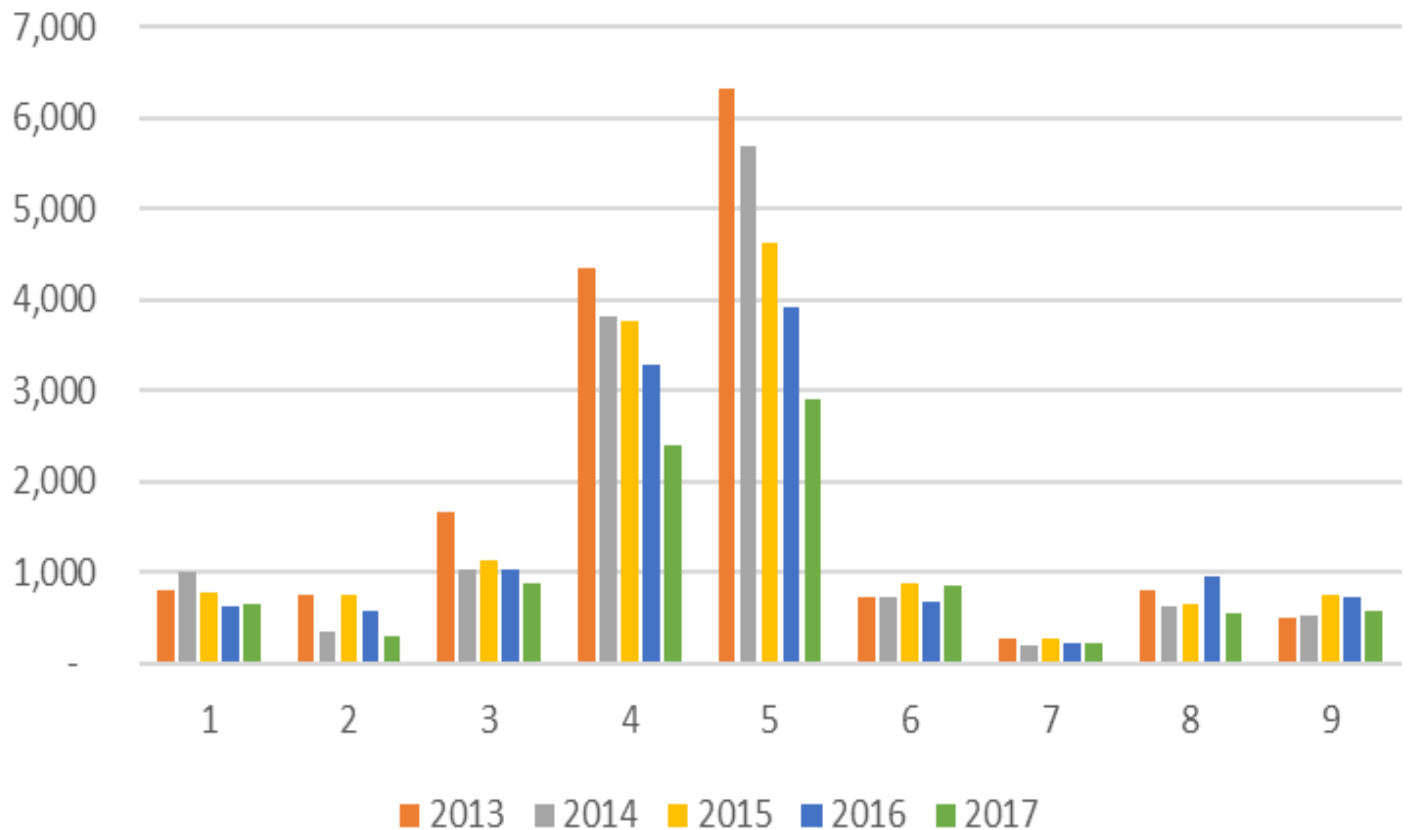
Inspections Conducted by Central Valley Water Board Staff 2008-2017



## Inspections per Region 2017



## Violations Recorded per Region - 2013-2017



# Progressive Enforcement

**Resources**

**Severity**

ACLs

56  
(25 MMPs)

Cease and Desist  
Orders

2

Time Schedule Orders

5

Cleanup and Abatement Orders

4

Investigative Orders

22

Notices of Stormwater  
Noncompliance

668

Informal Enforcement Actions

561

# 2017 Enforcement Policy Update

Updates include:

- Clarifying
- Procedural; and
- Substantive Changes

Presentation:

- Revisions to the ACL Penalty Methodology

STATE WATER RESOURCES CONTROL BOARD

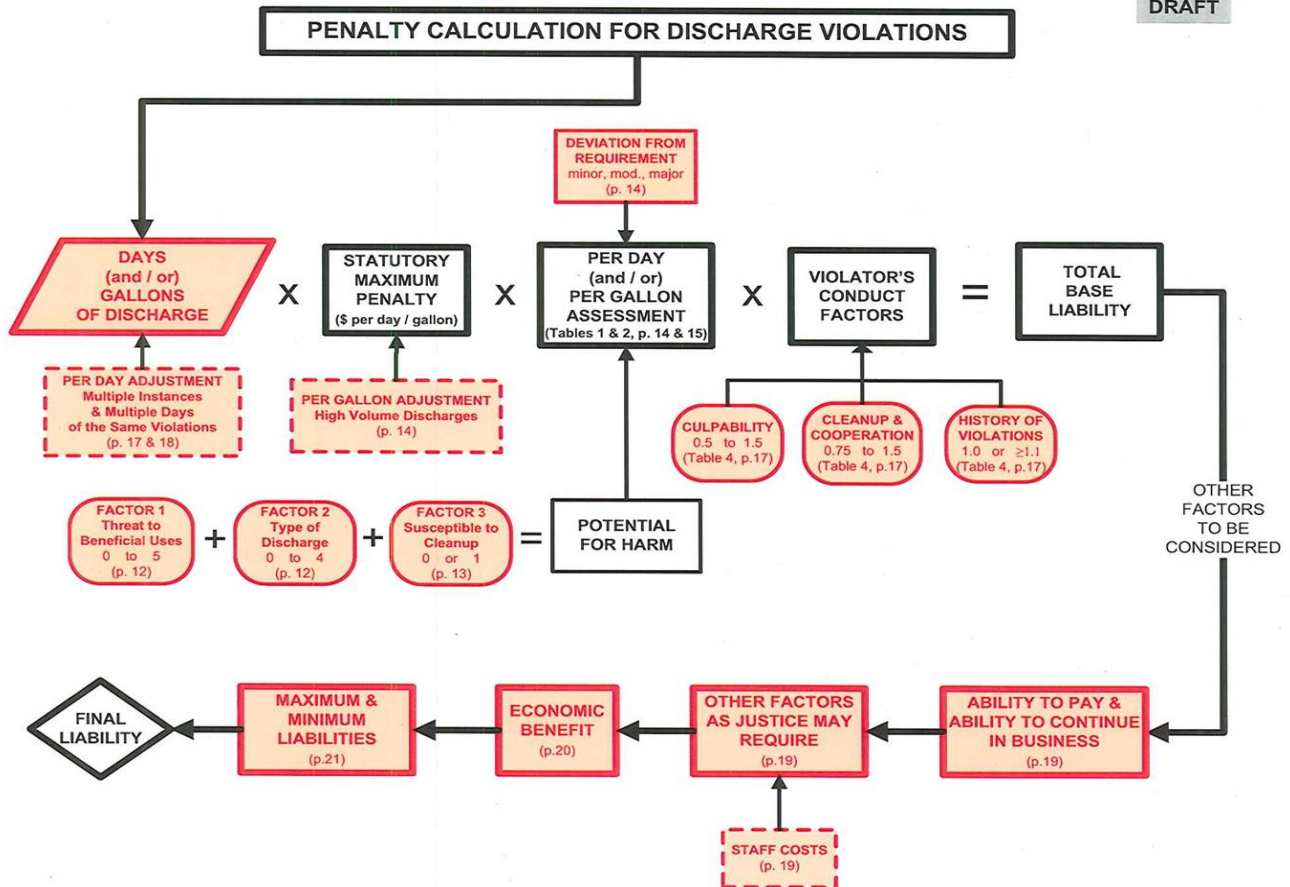
## WATER QUALITY ENFORCEMENT POLICY

Adopted April 4, 2017  
Effective October 5, 2017

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

# Revisions to the ACL Penalty Methodology

- Penalty Methodology – Establishes a method for the Water Boards to consider statutory factors when determining an appropriate civil liability in order to create a fair, transparent and consistent statewide approach to liability assessment
- Water Code Sections 13327 and 13385



# Revisions to the ACL Penalty Methodology

- Determining the Initial Liability Amount
  - Step 1: Determining the Potential for Harm
    - *Factor 1 – Toxicity (i.e., Characteristics of Discharge)*
    - Factor 2 – Harm
    - Factor 3 – Susceptibility to Cleanup

*Switch Factor 1 and Factor 2 so that Toxicity is determined before Harm/Potential for Harm*

*Clarify that Toxicity is determined based on the characteristics of the material before it is discharged*



# Revisions to the ACL Penalty Methodology

- Determining the Initial Liability Amount
  - Step 1: Determining the Potential for Harm
    - Factor 1 – Toxicity (i.e., Characteristics of Discharge)
    - *Factor 2 – Harm*
    - Factor 3 – Susceptibility to Cleanup

*Clarify that Potential for Harm can be used if actual harm cannot be quantified due to untimely reports, inadequate monitoring, and/or other practical limitations.*

# Revisions to the ACL Penalty Methodology

- Determining the Initial Liability Amount
  - Step 1: Determining the Potential for Harm
    - Factor 1 – Toxicity (i.e., Characteristics of Discharge)
    - Factor 2 – Harm
    - *Factor 3 – Susceptibility to Cleanup*

*Define “susceptibility to cleanup” in relation to whether 50% or more of the discharged material was actually cleaned up in a reasonable period of time.*

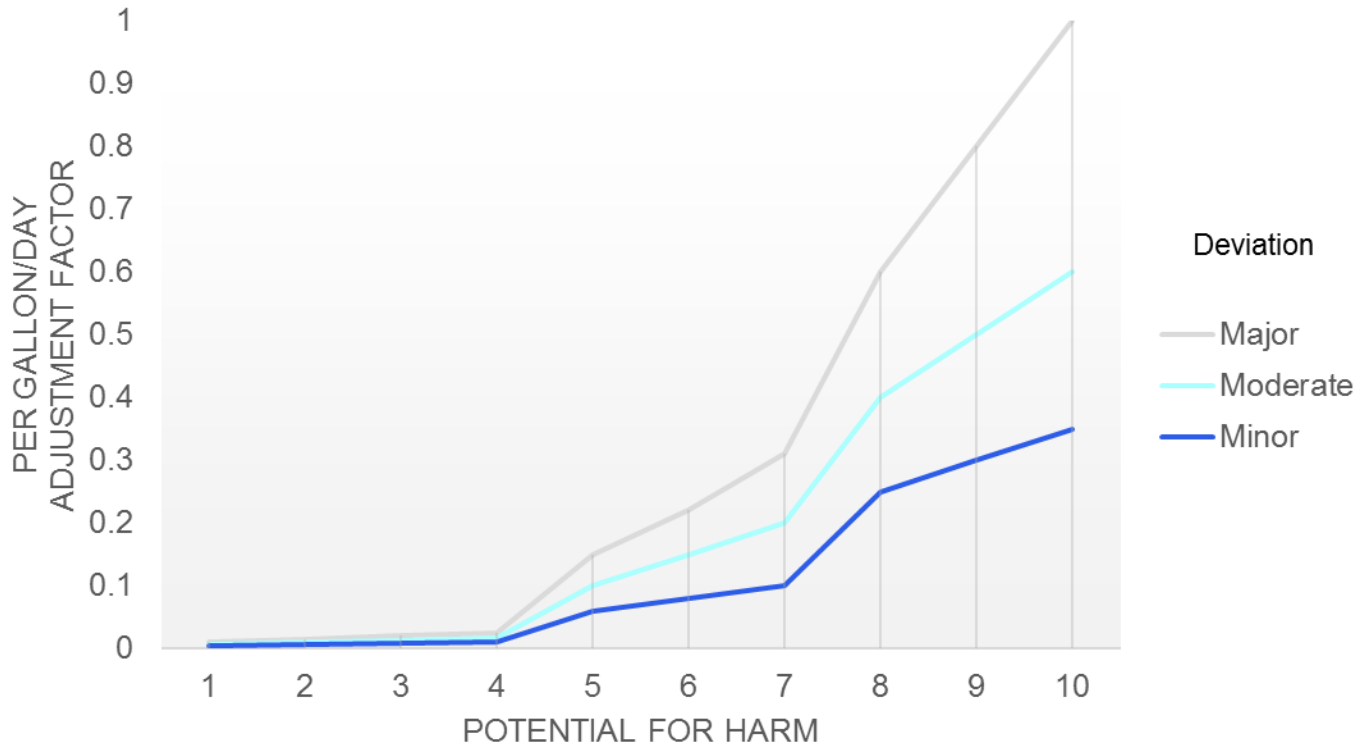
# Revisions to the ACL Penalty Methodology

- Potential for Harm Adjustment Factor:
  - Combine Sum of 3 Factors (1-10)
  - Ranges adjusted to “smooth out curve”
  - 0.005 to 1.0

	Potential for Harm									
Deviation from Requirement	1	2	3	4	5	6	7	8	9	10
Minor	0.005	0.007	0.01	0.02	0.04	0.08	0.14	0.2	0.3	0.35
Moderate	0.007	0.013	0.025	0.05	0.1	0.15	0.27	0.4	0.5	0.6
Major	0.01	0.02	0.04	0.08	0.15	0.28	0.41	0.6	0.8	1.0

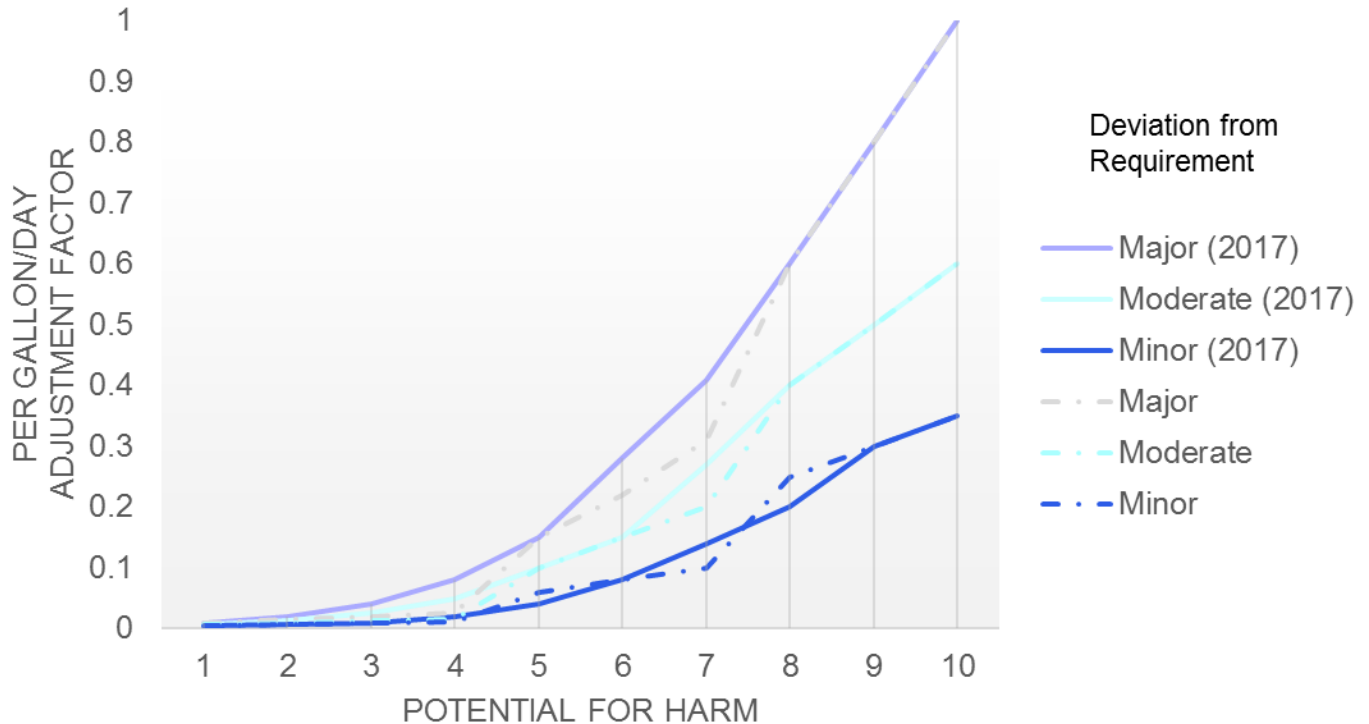
# Revisions to the ACL Penalty Methodology

## Enforcement Policy 2010: Tables 1 & 2



# Revisions to the ACL Penalty Methodology

## Enforcement Policy 2017: Tables 1 & 2



# Revisions to the ACL Penalty Methodology

- Per Day Violations
  - “Collapsing” of days
  - 30-60 days: “collapse” by a ratio of 5:1 rather than 30:1
  - Water Boards maintain discretion to not collapse days

# Revisions to the ACL Penalty Methodology

- High Volume Discharges

- Removes limitations to specific types of spills
- Defines “High Volume” as 100,000 to 2,000,000 gallons
- Discharges >2,000,000 gallons: \$1/gallon

# Revisions to the ACL Penalty Methodology

## Determining the Total Base Liability Amount

- Step 4: Conduct Adjustment Factors
  - *Culpability*
  - History of Violations
  - Cleanup and Cooperation

*Adjusts minimum multiplier from to .5 to .75*

*Clarifies rationale for applying multiplier of less than 1.*



# Revisions to the ACL Penalty Methodology

## Determining the Total Base Liability Amount

- Step 4: Conduct Adjustment Factors
  - Culpability
  - *History of Violations*
  - Cleanup and Cooperation

*No “reduction” in penalty for history of no violations.*

*Clarifies rationale for applying multiplier of less than 1.*

# Revisions to the ACL Penalty Methodology

## Determining the Total Base Liability Amount

- Step 4: Conduct Adjustment Factors
  - Culpability
  - History of Violations
  - *Cleanup and Cooperation*
- *Exceptional Cleanup and Cooperation: 0.75 – 1*
- *Reasonable: 1.0*
- *Below Reasonable: Above 1.0*

# Revisions to the ACL Penalty Methodology

## Determining the Final Liability Amount

- Final Checks and Considerations
  - *Ability to Pay*
  - Economic Benefit
  - Other Factors as Justice May Require
- *Income and Net Worth*
- *Response to Subpoenas*
- *A Consideration Only*

# Revisions to the ACL Penalty Methodology

## Determining the Final Liability Amount

- Final Checks and Considerations
  - Ability to Pay
  - *Economic Benefit*
  - Other Factors as Justice May Require
- *Absolute minimum for 13385 violations*
- *May be lower for other violations*

# Revisions to the ACL Penalty Methodology

## Determining the Final Liability Amount

- Final Checks and Considerations
  - Ability to Pay
  - Economic Benefit
  - *Other Factors as Justice May Require*
- *Clarifying language on recapturing staff costs*
- *Attorney/Hearing Costs not included*

# Application of New Policy

- Effective Date: 5 October 2017
- Clarifying and Procedural Changes Implemented
- Beginning to implement new methodology

# Revised Supplemental Environmental Projects (SEP) Policy

- Oversight Costs for Third Parties
- Greater than 50% of Settlement towards a SEP
- Twice Annual Reporting for Third Party SEPs
- Annual Reporting to OE for AB 1071 Compliance
- Completion of Project

# Future Priorities

- Ensure Compliance with Pending Changes in CV-SALTS Program
- Verify Business Rules for Enforcement Database Entry



# Questions?

